IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated.: 16.08.2007

CORAM:

THE HONOURABLE MR. JUSTICE K.MOHAN RAM

Second Appeal No.656 of 2007

P.Chinnathai Selva Rani .. Appellant

-Vs-

1. State of Tamil Nadu
   Rep. by its Secretary,
   Education Department
   Fort St. George, Chennai - 9

2. The Director of School Education
   College Road, Nungambakkam,
   Chennai - 34

3. Mrs. Patchi Ammal .. Respondents

APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree in A.S.No.278 of 2005 on the file of the IV Additional Judge, City Civil Court, Chennai, dated 15.12.2006 confirming the judgment and decree in O.S.No.591 of 2002 on the file of the VI Assistant City Civil Judge, Chennai, dated 20.09.2004.

For Appellant : Mr. A.R.Nixon

J U D G M E N T

The unsuccessful plaintiff in O.S.No.591 of 2002 on the file of the VI Assistant Judge, City Civil Court, Chennai is the appellant in the above second appeal.

2. For the sake of convenience the parties are referred to as per their ranking in the suit.

3. The short facts that are necessary for the disposal of the above appeal are as follows:-

The case of the plaintiff is that in the plaintiff's SSLC book her date of birth is mentioned as 09.02.1954; the said entry was made on the basis of the declaration given by her father; the plaintiff is the third child of her parents; the plaintiff is working as headmistress in SBOA School and Junior College, Anna Nagar, Chennai - 101; when the plaintiff went to Tuticorin to see her mother on 03.12.2000, the plaintiff's mother informed her casually that her date

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of birth was 09.02.1956; on further probe being made by the plaintiff she came to know that her father had declared her age mistakenly while admitting her in the school; thereafter the plaintiff applied for a certified copy of her birth certificate with the Tuticorin Municipality on 05.03.2001 and obtained the same on 23.03.2001 and as per birth certificate the plaintiff's date of birth is 09.02.1956; the plaintiff informed her correct date of birth to her employer by enclosing the birth certificate issued by the Tuticorin Municipality for changing her date of birth in the service register and the employer informed her that unless her date of birth is changed in the SSLC book the entry cannot be changed in the service register; thereafter the plaintiff issued a legal notice to the defendants and no reply was received from the defendants, but the second defendant in the reply dated 19.06.2001 informed the plaintiff that as per Subsidiary Rule 5 of the SSLC scheme change of date of birth in the SSLC book cannot be entertained after the pupil has completed his Secondary School Course and appeared for the SSLC Public examination; in the said circumstances the plaintiff filed a suit for declaration that the date of birth of the plaintiff is 09.02.1956 and for consequential mandatory injunction directing the defendants to make alteration and the date 09.02.1954 in the SSLC Book bearing No.011706 dated 16.07.1969 as 09.02.1956.

4. The defendants contested the suit interalia contending that as per the Subsidiary Rule 5 of the SSLC Scheme, request for alteration of date of birth cannot be considered after "the pupil has completed the school course, sat for the SSLC Public Examination, marks entered and the certificate completed. For admission to Standard I, a pupil should have completed the age of five plus years as on the 31st July of the year of admission". If her date of birth is now changed the plaintiff would not satisfy the above minimum age prescribed for admission to school and the admission already made will become against rules. It was also contended that the suit was bad for non-joinder of the employer of the plaintiff, the parents and also the brothers and sisters of the plaintiff. It was further contended that if the plaintiff was interested in altering her date of birth, she should have corrected her date of birth within five years from the date of her entry into service. On the above said pleadings the defendants sought for dismissal of the suit.

5. After framing appropriate issues the suit was taken up for trial and during trial the plaintiff got herself examined as P.W.1 and marked Exs.A-1 to A-6. The defendants did not let any oral or documentary evidence. The Trial Court on a consideration of the evidence adduced in the case dismissed the suit. Being aggrieved by that the plaintiff filed an appeal in A.S.No.278 of 2005 before the IV Additional Judge, City Civil Court, Chennai. The Lower Appellate Court also on an independent consideration of the oral and documentary evidence available on record and the law on the subject concurred with the findings of the Trial Court and dismissed the appeal. Being

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aggrieved by that the above second appeal has been filed.

6. Heard Mr. A.R.Nixon learned counsel appearing for the appellant. Learned counsel for the appellant submitted that both the Courts below have failed to see that the suit for declaration is maintainable before the Civil Court; the birth of the appellant is not merely an event but confers the legal status which is civil in nature and dissented from any other act and therefore the declaration suit filed by the plaintiff for rectification of the date of birth is maintainable; the incorrect date of birth entered in the SSLC Book causes serious civil consequences; Ex.A-3-Birth Certificate issued by the Tuticorin Municipality has not been properly considered; the non-examination of the brother and sister of the plaintiff is not fatal to the case of the plaintiff. Learned counsel further submitted that the rules framed by the Educational Authorities is not proper. In support of the above said contentions the learned counsel relied upon the following decisions:-

(i) A.I.R. 1988 Karnataka 67 (State Vs. T.Srinivas),

(ii) 1998 Labour and Industrial Cases 660 (State of Orissa Vs. Jagadish) and

(iii) A.I.R. 1991 S.C. 1546 (Ishar Singh Vs. National Fertilizers).

7. A perusal of the judgments of the Courts below clearly shows that both the Courts below have relied upon the decisions of the Apex Court and this Court respectively reported in 2004 (2) M.L.J. 177 (SC) (State of Punjab Vs. Chadha) and 2004 (2) M.L.J. 564 (Union of India Vs. Central Administrative Tribunal, (Additional Bench), Madras) wherein the Apex Court and a Division Bench of this Court have held that the similar relief sought for by the plaintiff cannot be granted if the plaintiff seeks the same belatedly. The Trial Court has observed that the plaintiff has approached the Court at her later age and if her date of birth is altered she would not be in a position to be admitted in the first standard and she would not be in a position to write SSLC examination and therefore such corrections are not possible. The Lower Appellate Court has also elaborately considered the materials available on record and the decision reported in A.I.R.1988 Karnataka 67 (referred to supra) on which the petitioner based reliance in support of her case. A perusal of the decision reported in A.I.R. 1988 Karnataka 67 (referred to supra) shows that a suit for declaration of the correct date of birth is maintainable in Civil Court and a decree could be passed rectifying the date of birth and the provisions of Karnataka State Servants (Determination of Age) Act 1974 provides for filing of such a suit, but in this case we are concerned with the Tamil Nadu Rules which governs the issue. The Subsidiary Rule 5 of SSLC Scheme does not permit to alter the date of birth after the student left the school and after appearing for examination. As per the said Rule alterations can be effected only before the student leaves the school. The relevant rule has been considered by the lower appellate court in detail in paragraph 15 of

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the judgment. Had the plaintiff or her parents approached the school authorities and a declaration had been given with relevant birth certificate or with any other proof, such a request would have been considered by the authorities, but neither the plaintiff nor her parents had made such a request to the school authorities before the plaintiff completed her SSLC course.

8. A perusal of the Subsidiary Rule 5 of SSLC scheme makes it crystal clear that alterations regarding the date of birth can be effected before the student leaves the school and it is not possible at any cost after the student left the school and appeared for the examinations. In refusing to grant the relief sought for by the plaintiff, the lower appellate court has placed its reliance on a decision of a learned Judge of this Court rendered in W.P.No.4244 of 1965. In that decision, the following observation is found:-

> "When once the petitioner ceased to be a student there was nothing in relation to him that the Director of Public Instruction is called upon by a regulation to do and if they should be justified in rejecting the application".

9. The lower appellate court has observed that Ex.A-3-certificate had been obtained from the Tuticorin Municipality only in the year 2001 after the plaintiff is said to have come to know about the correct date of birth from her mother. As rightly pointed out by the lower appellate court since the certificate had been obtained belatedly and relief has been sought for much belatedly, reliance cannot be placed on Ex.A-3, even though her name is mentioned in the certificate. When both the Courts below on a consideration of the oral and documentary evidence available on record have not believed the genuineness of Ex.A-3 it is not open to this Court to re-appreciate the evidence and come to a different conclusion.

10. In the decision reported in 2004 (2) M.L.J. 177 (SC) (referred to supra) in paragraph 11 it is observed as follows:-

> "11. An application for correction of the date of birth should not be dealt with by the Courts, Tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may loose the promotion for ever. Cases are not unknown when a person accepts appointment keeping in view the

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> date of retirement of his immediate senior. This is certainly an important and relevant aspect, which cannot be lost sight of by the Court or the Tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the Court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time".

A reading of the above observations of the Apex Court makes it very clear that even if a clear case on the basis of the materials which can be held to be conclusive in nature is made out by the plaintiff that her real age of birth is different from the one entered in the SSLC Book unless steps had been taken within a reasonable time as provided in the Rules governing the issue, the Court cannot issue a direction or make a declaration on the basis of the materials which make such claim only plausible. Further the Court must be fully satisfied that there had been real injustice to the person concerned and the claim for correction of date of birth has been made in accordance with the procedures prescribed and within the time fixed by any rule or order. If no rule or order has been framed or made prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time.

11. As pointed out above, the plaintiff was born, as per the entry in the SSLC Book, on 09.02.1954 and she had joined the school and completed her SSLC long back and even according to the plaintiff she came to know that her real and correct date of birth is 09.02.1956 only in the year 2001, through her mother and thereafter only has applied for Ex.A-3 and applied for change of date of birth to the defendants. Thus, there is a huge unexplained delay in approaching the authorities concerned. As laid down by the Apex Court in the above said decision, the plaintiff has approached the Court belatedly and it has to be pointed out that no injustice will be caused to the plaintiff if the declaration sought for by the plaintiff is not granted. But for the entry of the date of birth of the plaintiff as 09.02.1954, she would not have been admitted to the school and would not have completed the SSLC course and even assuming that wrong date

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of birth has been given it cannot be said that it had caused any loss to the plaintiff and if at this stage the date of birth is changed then the plaintiff will become entitled to a double benefit namely by taking advantage of the declaratory decree the plaintiff will approach her employer to change the date of birth from 09.02.1954 to 09.02.1956 which in effect will enable her to continue in service for two more years which cannot be permitted. Thus, even on equity the plaintiff is not entitled for declaration. Hence I see absolutely no reason to interfere with the reasonings of the Courts below. The decision reported in 1998 Labour and Industrial Cases 660 (referred to supra) has to be considered in the light of the Subsidiary Rule 5 of the SSLC scheme and not in isolation and therefore the ratio of the decision is not applicable to the facts of this case. Similarly the ratio laid down in A.I.R. 1991 S.C. 1546 (referred to supra) is not applicable to the facts of this case, as the facts of that case are totally different.

12. This Court is of the considered view that no question of law much less any substantial question of law arises for consideration in the above second appeal and hence the second appeal fails and the same is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

srk

To

1.The Registrar, City Civil Court, Chennai.
2.The IV Additional Judge, City Civil Court, Chennai,
3.The VI Assistant City Civil Judge, Chennai.

One cc to Mr.A.R.Nixon, advocate SR.No.51270

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